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9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 JAMES WANG, individually and on behalf of
14 all others similarly situated,

15 Plaintiff,

16 v.

17 OCZ TECHNOLOGY GROUP, INC.,

18 Defendant.

Case No. CV11-01415 PSG

~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER
AS AMENDED BY THE COURT

The Honorable Paul S. Grewal

Complaint filed: March 24, 2011

1 WHEREAS Defendant OCZ Technology Group, Inc. ("OCZ") contends that discovery in
2 this Action may require production of trade secrets or confidential, sensitive, or proprietary
3 materials and information, which, if disclosed, may cause competitive harm to OCZ and/or to the
4 party producing the materials and information;

5 WHEREAS OCZ contends that such confidential and proprietary materials and
6 information consist of, among other things, business or financial information, information
7 regarding confidential and sensitive business practices, intellectual property and trade secrets, or
8 other confidential research, development or commercial information (including information on
9 marketing, strategy, design and engineering schematics, and information implicating privacy
10 rights of third parties);

11 WHEREAS Plaintiff disagrees with OCZ's contention and believes that any blanket
12 designation of discovery material as "Confidential" should be presumed to be invalid; and

13 WHEREAS OCZ disagrees with Plaintiff's abovementioned recital.

14 IT IS HEREBY STIPULATED by and among counsel for Plaintiff James Wang and
15 counsel for Defendant OCZ Technology Group, Inc. (individually a "Party", and collectively
16 "Parties"), as follows:

17 1. Confidential Information produced or exchanged in the course of this litigation
18 shall be used solely for the purpose of preparation and trial, appeal and/or settlement of this
19 litigation and for no other purpose whatsoever, and shall not be disclosed to any person except in
20 accordance with the terms hereof.

21 2. "Confidential Information," as used herein, means information of any type, kind
22 or character which is designated "Confidential" by any of the parties to the action or other
23 person(s) producing the information (including nonparties) ("Designating Person"), whether it be
24 a document, information contained in a document, information revealed during a deposition,
25 information revealed in an interrogatory answer or otherwise in discovery. In designating
26 information as "Confidential," the Designating Person will make such designation only as to that
27 information that it in good faith and reasonably believes is Confidential within the meaning of
28 Rule 26(c) of the Federal Rules of Civil Procedure and as further defined below. Information or

1 material which is available to the public, including press releases, public documents filed with
2 the Securities and Exchange Commission, and the like shall not be classified as "Confidential."
3 Confidential Information includes, but is not limited to, sensitive proprietary information, such
4 as trade secrets or other confidential or proprietary research, development or commercial
5 information; non-public financial and business information; commercially sensitive information;
6 or personal information of the Designating Person. The parties will make a good faith effort to
7 use the "Confidential" designation only when it reasonably believes such a designation is
8 needed.

9 3. Confidential Information shall be so designated by stamping copies of the
10 document containing the Confidential Information with the legend "CONFIDENTIAL" on each
11 page of the document.

12 4. Confidential Information produced by third parties that is not designated as
13 Confidential by the producing third party shall automatically be treated as Confidential for the
14 first 30 days after production of the documents or information. Should either Party believe that
15 such documents or information are Confidential Information, the Party shall inform the other
16 Party within 30 days of production to the Parties, and shall reproduce the improperly designated
17 Confidential Information to the other Party with the appropriate designation. Upon receiving the
18 reproduced Confidential Information, the Parties shall destroy the documents or information
19 originally produced by the third parties or shall return them to the third party. If no such
20 designation is made by either Party within the 30 day period, the documents and information
21 shall no longer automatically be Confidential.

22 5. Testimony taken at a deposition may be designated as Confidential by making a
23 statement to that effect on the record at the deposition or by providing notice of such designation
24 within 30 days of the completion of the deposition. The Designating Person shall make any
25 necessary arrangements with the court reporter taking and transcribing such proceeding to
26 separately bind such portions of the transcript containing information designated as Confidential,
27 and to label such portions with the legend "CONFIDENTIAL."
28

1 6. Information designated as “CONFIDENTIAL” may be disclosed or made
 2 available only to the Court (or any appellate court), its personnel (subject to provisions of filing
 3 under seal or lodging set forth below), and any persons employed and/or controlled by the Court
 4 whose duties require access to the Confidential Information, including jurors, alternate jurors;
 5 outside counsel for any Party (including their associates, paralegals and clerical personnel), the
 6 Parties, including employees and agents of the Parties, in-house counsel of the parties, and to the
 7 following “Qualified Persons”:

8 a. Persons retained or consulted by the Parties or their attorneys for purposes
 9 of this litigation (including, but not limited to, experts), if such persons reasonably require the
 10 information to enable them to assist counsel in the prosecution or defense of this litigation;

11 b. Any court reporters who take testimony, their staff, and professional
 12 vendors to whom disclosure is reasonably necessary for this litigation;

13 c. Any witness at any deposition or other proceeding in this action;

14 d. Counsel representing any insurer or indemnitors of Defendant;

15 e. Any person who authored any portion, or has previously received or is
 16 reasonably believed to have been provided access to, the material in the ordinary course of his or
 17 her business;

18 f. The person(s) (including third parties) who produced the particular
 19 Confidential Information in question, and any officer, employee or agent of such producer; and

20 g. Any other person as to whom the parties in writing agree.

21 7. Any person desiring to reveal Confidential Information to any of the persons
 22 referred to in paragraphs 6(a) and 6(c), shall first secure from each person a signed certificate in
 23 the form attached hereto as Exhibit “A,” before disclosing any information subject to the
 24 restrictions of this Protective Order. In the event that a non-party witness at a properly noticed
 25 deposition refuses to sign the certificate described in Exhibit A, Counsel for a Party may show
 26 Confidential Information to such witness *at the deposition*, subject to informing the deponent of
 27 the terms of this Protective Order and providing the deponent with a copy of this Protective
 28 Order. The deponent shall not be given possession of the Confidential Information outside the

1 deposition, including with respect to the transcript of the deposition in which the Confidential
2 Information shall be separately bound, and shall not be permitted to retain any copies of any
3 Confidential Information shown to him or her at the deposition. No Party or Counsel for any
4 Party may instruct any witness not to sign the certificate described in Exhibit A. Counsel for the
5 party who provided the Confidential Information to the persons listed in Paragraph 6(a) and 6(c)
6 shall retain all original signed certificates obtained from any person pursuant to this Paragraph.
7 Executed Exhibits A shall not be discoverable except as required to enforce this Protective Order
8 or as otherwise allowed under the Federal Rules of Civil Procedure and case law interpreting
9 those rules. Within 30 days of final resolution of this Action, upon request by a Party, the other
10 Party shall turn over copies of the executed Exhibits A.

11 8. This Protective Order shall be binding upon the Parties (including all employees
12 and agents of the Parties), outside counsel for any Party (including their associates, paralegals
13 and clerical personnel), in-house counsel of the parties, and all “Qualified Persons” who,
14 pursuant to the preceding paragraph, have executed an agreement to be bound by the terms of
15 this Protective Order.

16 9. All Confidential Information that is designated “CONFIDENTIAL” and that is
17 filed with the Court, marked as an exhibit at a deposition, disclosed to a deponent at a deposition,
18 or otherwise provided to any other Party or counsel in the Action for any purpose shall be filed
19 under seal pursuant to Northern District of California Local Rule 79-5 and General Order No. 62,
20 or shall be lodged but not filed, until further order of this Court. This Section shall not apply to
21 the Parties’ submission of exhibits for trial, nor the handling of exhibits during trial.

22 10. Nothing in this Protective Order shall prevent any Party from disclosing its own
23 Confidential Information as it deems appropriate. However, the restrictions set forth in this
24 Order shall not apply to information that is public before the date of its transmission to the
25 receiving Party, or which becomes known to the public after the date of its transmission to the
26 receiving Party, provided that such information does not become publicly known by any act or
27 omission of the receiving Party, its employees, or its agents which would be in violation of this
28 Protective Order.

Before petitioning the court, the parties shall attempt to resolve the challenge in good faith by conferring directly (in voice to voice dialogue) within 10 days of the date of service of written notice. The party challenging the designation may proceed to seek court intervention only if it has engaged in this meet and confer process first or establishes that the designating party is unwilling to participate in the meet and confer process in a timely manner. See Model Order 6.2.

1 11. Should either Party believe that the other Party has inappropriately designated or
2 is inappropriately designating documents or information “CONFIDENTIAL”, or otherwise
3 wishes to be relieved of obligations under this Order, it may petition the Court to be relieved of
4 its obligations upon ten (10) days’ written notice to the other Party. Until the Court rules on the
5 motion, Confidential Information shall continue to be treated and designated as Confidential. It
6 shall be the burden of the party who makes the designation to demonstrate that the material or
7 information at issue was properly designated.

8 12. Nothing herein shall restrict or preclude any party from responding to a subpoena
9 or information request issued by a court of law or on behalf of a governmental agency.
10 However, upon receipt of a subpoena or other request for Confidential Information, the Party
11 shall forward a copy of the subpoena or request to the Designating Person within three (3)
12 business days of service and afford the Designating Person a reasonable time after the receipt of
13 such notice to contest the production of Confidential Information sought by the subpoena or
14 other request. If the Designating Person fails to seek an appropriate order within five (5)
15 business days and thereafter obtain such an order, the Party responding to the subpoena or other
16 request will not be deemed in breach of this Protective Order by producing Confidential
17 Information sought by the subpoena or other request.

18 13. Within 60 days of the final resolution of this Action, including appeals, all Parties
19 and persons to whom any Confidential Information has been disclosed or provided shall either
20 return them to the Producing Party or destroy all such Confidential Information, in which event
21 the Party or person in possession of the Confidential Information shall give written certification
22 of such destruction to Counsel for the Producing Person; provided, however, that this obligation
23 shall not extend to any Confidential Information included in conformed copies of materials filed
24 with the Court. Notwithstanding the preceding paragraph, the attorney of record for any Party
25 may retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,
26 correspondence, papers filed with the court, discovery, discovery responses, documents produced
27 in formal or informal discovery, and attorney work product, even if such materials contain
28 Confidential Information. Any such archival copies that contain or constitute Confidential

1 Information remain subject to this Protective Order and shall continue to be treated as
 2 Confidential while it is held as an archival copy by the attorney of record for any Party.

3 14. Neither the taking of any action in accordance with the provisions of this
 4 Protective Order, nor the failure to object thereto, shall be construed as a waiver of any claim or
 5 defense in this Action. The entry of this Protective Order shall not be construed as a waiver of
 6 any other right to object to the furnishing of information or documents in response to discovery
 7 or to obtain information or documents in discovery, and, except as expressly provided, shall not
 8 relieve any Party of the obligation to produce information or documents in the course of
 9 discovery.

10 15. This Protective Order shall not prevent any Party from applying to the Court for
 11 relief therefrom, or from applying to the Court for further or additional protective orders, or from
 12 agreeing to modify this Protective Order, subject to the approval of the Court.

13 16. This Protective Order shall not control the use of any evidence during the trial of
 14 this Action. However, nothing herein shall preclude any Party from seeking the assistance of the
 15 Court in maintaining the Confidential nature of any evidence which is presented at trial.

16 17. If a Producing Person through inadvertence or otherwise produces or provides
 17 discovery of any Confidential Information without designating it as such in accordance with this
 18 Protective Order, the Producing Person may give written notice to the Party or Parties that have
 19 received the Confidential Information that the document(s), information, response, testimony or
 20 other discovery are Confidential and should be treated as Confidential in accordance with the
 21 provisions of this Protective Order. The Party or Parties that have received the materials must
 22 treat the materials as Confidential from the date such notice is received. The inadvertent
 23 disclosure of any Confidential Information shall not be deemed a waiver of confidentiality as to
 24 any other document in which such Confidential Information may be contained.

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If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. See Model Order 5.3.

1 18. This Order shall not bar any attorney herein in the course of rendering advice to
2 his client with respect to this litigation from conveying to any Party client his evaluation of
3 Confidential Information produced or exchanged herein.

4 IT IS SO STIPULATED.

5 Dated: December 6, 2011

MAYER BROWN LLP
NEIL M. SOLTMAN
MATTHEW H. MARMOLEJO
RUTH ZADIKANY

8 By: s/ Ruth Zadikany

9 Ruth Zadikany
10 Attorneys for Defendant
OCZ TECHNOLOGY GROUP, INC.

11 Pursuant to General Order No. 45, I Ruth Zadikany, attest that I obtained concurrence in the
12 filing of this document from the signatories.

13 Dated: December 6, 2011

14 THE ROSEN LAW FIRM, P.A.
LAURENCE M. ROSEN
15 PHILLIP KIM

16 THE HINTON LAW FIRM
CHRISTOPHER HINTON

17 By: s/ Phillip Kim
18 Phillip Kim

19 Attorneys for Plaintiff
JAMES WANG

20 PURSUANT TO STIPULATION, IT IS SO ORDERED.

21 Dated: December _14_, 2011

22 Paul S. Grewal
23 Honorable Paul S. Grewal
24 United States Magistrate Judge

EXHIBIT A**NON-DISCLOSURE AGREEMENT**

I, _____, do solemnly affirm that I am fully familiar with the terms of the stipulated protective order in *James Wang v. OCZ Technology Group, Inc.*, pending before the United States District Court for the Northern District of California, Civil Action No. CV 11-01415 PSG, and hereby agree to comply with and be bound by the terms and conditions of said Order unless and until modified by further Order of this Court. I hereby consent to the jurisdiction of said Court for purposes of enforcing this Order.

DATED: _____

Signature_____
PRINT NAME